

## REMARKS

The last Office Action of February 9, 2005 has been carefully considered. Reconsideration of the instant application in view of the foregoing amendments and the following remarks is respectfully requested.

Claims 1-23 are pending in the application. Claims 1, 11, 13, 15, 21, 23 have been amended. No claims have been canceled or added. No amendment to the specification has been made. No fee is due.

It is noted that claims 1-23 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 3-9, 14, 16-17, and 19-22 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Pat. Appl. Publ. No. 2002/0021041 to Jessup et al.

Claims 12-13 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Jessup et al. in view of U.S. Pat. No. 3,179,260 to Shelton et al.

It is noted with appreciation that claims 10, 11, 15, 18, and 23 are indicated allowable if rewritten in independent form to overcome the rejection under 35 U.S.C. §112 and to include all of the limitations of the base claim and any intervening claims. However, applicant wishes to defer amendments to these dependent claims in view of the arguments presented below regarding amended claims 1 and 21.

## **REJECTION UNDER 35 U.S.C. §112, SECOND PARAGRAPH**

Applicant has amended claims 1, 15, 21, and 23 to address the §112 rejection, although applicant respectfully disagrees with the reasoning for the rejection. The present invention relates to a positioning apparatus for installation in a vehicle, such as an armored vehicle. Even though the instant specification describes the use of the positioning apparatus in connection with a vehicle, there is no need to positively claim the vehicle, as it does not form part of the invention per se. The reference to the vehicle's roof or body is only intended to set forth a presently preferred area for securement of the positioning apparatus that is contemplated by the inventor. Applicant believes that the claims are clear and definite on this point.

Claims 11, 13, 15 and 23 have also been amended, as suggested by the Examiner.

It is applicant's contention that the changes in claims 1, 11, 13, 15, 21, and 23 to address the §112 rejection are merely cosmetic in nature and should not be considered as a narrowing amendment to trigger prosecution history estoppel.

Withdrawal of the rejection of the claims 1-23 under 35 U.S.C. §112, second paragraph is thus respectfully requested.

## **REJECTION UNDER 35 U.S.C. §§102(b) AND 103(a)**

In order to clearly distinguish the present invention from the Jessup et al. reference, applicant has amended claims 1 and 21 by setting forth the particular movement pattern of the seating area, when the occupant moves to the upright position. As shown in particular by the comparison of the illustrations of Figs. 1 and 2, as the occupant assumes the upright position, the seating area swings downward and backwards toward the carrier frame. In this way, the seating area is prevented from interfering with the occupant's movement from the seated disposition to the upright disposition.

The Jessup et al. reference merely shows a restraint system that is height-adjustable. Jessup et al. is silent as to the possibility to allow a restrained person to move between seated and upright dispositions. When the person intends to stand up, the seat in Jessup et al. would inhibit this movement as the front edge of the seat would hit against the hollow of the knee. Thus, Jessup et al. fail to disclose the backward movement of the seating area during movement of the person to the upright position. In addition, Jessup et al. also fails to disclose the suspended securement of the carrier frame in the vehicle.

For the reasons set forth above, it is applicant's contention that Jessup et al. neither teaches nor suggests the features of the present invention, as recited in claims 1 and 21.

As for the rejection of the retained dependent claims, these claims depend on claims 1 and 21, respectfully, share their presumably allowable features, and therefore it is respectfully submitted that these claims should also be allowed.

Applicant has also carefully scrutinized the further cited prior art and finds it without any relevance to the newly submitted claims. It is thus felt that no specific discussion thereof is necessary.

### **CONCLUSION**

Applicant believes that when reconsidering the claims in the light of the above comments, the Examiner will agree that the invention is in no way properly met or anticipated or even suggested by any of the references however they are considered.

In view of the above presented remarks and amendments, it is respectfully submitted that all claims on file should be considered patentably differentiated over the art and should be allowed.

Reconsideration and allowance of the present application are respectfully requested.

Should the Examiner consider necessary or desirable any formal changes anywhere in the specification, claims and/or drawing, then it is respectfully requested that such changes be made by Examiner's Amendment, if the Examiner feels this would facilitate passage of the case to issuance. If the

Examiner feels that it might be helpful in advancing this case by calling the undersigned, applicant would greatly appreciate such a telephone interview.

Respectfully submitted,

By: 

Henry M. Feiereisen  
Agent For Applicant  
Reg. No: 31,084

Date: June 29, 2005  
350 Fifth Avenue  
Suite 4714  
New York, N.Y. 10118  
(212)244-5500  
HMF:af